

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PERRIN BURSE,

Plaintiff,

v.

**Civil Action 2:15-cv-2992
Judge Michael H. Watson
Magistrate Judge Jolson**

CHARLOTTE JENKINS, et al.,

Defendants.

**REPORT AND RECOMMENDATION
AND ORDER**

This matter is before the Court on numerous Motions. Specifically, currently before this Court for consideration are: Plaintiff's "Motion Requesting Leave To Supplement The Complaint, Pursuant To FRCP 15(E), And To Demand Judgment For Defendants' Default Pursuant To FRCP 54(c) And 55, In Reference To Defendants' Attempt To Commit Fraud Upon the Court" (Doc. 57); "Defendants' Motion For Leave To Supplement Discovery And Response In Opposition To Plaintiff's Motions To Supplement The Complaint And Default Judgment" (Doc. 58); Plaintiff's "Motion For Appointment Of Counsel, Pursuant To 28 USCS 1915, Due To Special Circumstances" (Doc. 60; *see* Response in Opposition (Doc. 61)); and Plaintiff's Motions "Of Judicial Inquiry For Possible Outstanding Motions" (Docs. 62, 63). The Court examines the pending Motions in turn.

I. Plaintiff's "Motion Requesting Leave To Supplement The Complaint, Pursuant To FRCP 15(E), And To Demand Judgment For Defendants' Default Pursuant To FRCP 54(c) And 55, In Reference To Defendants' Attempt To Commit Fraud Upon the Court" (Doc. 57)

Although not entirely clear, Plaintiff filed the Motion seeking to add a claim of "Fraud Upon the Court" based on Defendants' alleged misrepresentations concerning when Plaintiff received certain mail and for their deliberate attempt to delay the litigation of this case. (Doc. 57 at 3–4 (alleging alteration of the prison mail log)). Plaintiff's arguments relate to Defendants' Response To The Report And Recommendation (Doc. 52) And Defendants' Response To Plaintiff's Objections (Doc. 55). On March 29, 2016, this Court issued an Opinion and Order that, *inter alia*, adopted and affirmed the Report and Recommendation. (Doc. 64). Consequently, it is **RECOMMENDED** that the Motion be **DENIED** as **MOOT**. (Doc. 57).

II. Defendants' Motion For Leave To Supplement Discovery And Response In Opposition To Plaintiff's Motions To Supplement The Complaint And Default Judgment (Doc. 58)

In the Motion, Defendants explain that this case has been handled by several attorneys, which resulted in the need to supplement discovery. (Doc. 58). It appears Defendants have already done so. (*See id.*). Further, this Court's March 29, 2017, Opinion and Order allowed the parties until Monday, May 1, 2017, to file dispositive motions and did not contemplate the need for further discovery in this case. For these reasons, the Motion is **DENIED** as **MOOT**. (Doc. 58).

III. Plaintiff's "Motion For Appointment Of Counsel, Pursuant To 28 USCS 1915, Due To Special Circumstances" (Doc. 60; see Response in Opposition (Doc. 61))

Plaintiff seeks appointment of counsel due to special circumstances. (Doc. 60). Since this action has not yet progressed to the point that the Court is able to evaluate the merits of Plaintiff's claim, the Motion is **DENIED**. (*Id.*).

IV. Plaintiff's Motions "Of Judicial Inquiry For Possible Outstanding Motions" (Docs. 62, 63)

In the Motions Of Judicial Inquiry, Plaintiff inquires as to whether there has been a ruling on his "Motion Requesting Leave To Supplement The Complaint, Pursuant To FRCP 15(E), And To Demand Judgment For Defendants' Default Pursuant To FRCP 54(c) And 55, In Reference To Defendants' Attempt To Commit Fraud Upon the Court" (Doc. 57) and Defendants' Motion For Leave To Supplement Discovery And Response In Opposition To Plaintiff's Motions To Supplement The Complaint And Default Judgment (Doc. 58). Because the instant Report and Recommendation and Order addresses those Motions, the Motions Of Judicial Inquiry are **DENIED** as **MOOT**. (Docs. 62, 63).

V. CONCLUSION

For the reasons set forth above, it is **RECOMMENDED** that Plaintiff's "Motion Requesting Leave To Supplement The Complaint, Pursuant To FRCP 15(E), And To Demand Judgment For Defendants' Default Pursuant To FRCP 54(c) And 55, In Reference To Defendants' Attempt To Commit Fraud Upon the Court" be **DENIED** as **MOOT**. (Doc. 57). Further, Defendants' Motion For Leave To Supplement Discovery And Response In Opposition To Plaintiff's Motions To Supplement The Complaint And Default Judgment is **DENIED** as **MOOT** (Doc. 58), Plaintiff's "Motion For Appointment Of Counsel, Pursuant To 28 USCS

1915, Due To Special Circumstances” is **DENIED** (Doc. 60), and Plaintiff’s Motions “Of Judicial Inquiry For Possible Outstanding Motions” (Docs. 62, 63) are **DENIED** as **MOOT**.

Procedure on Objections to Report and Recommendation

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Procedure on Objections to Order

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are

due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This Order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.3.

IT IS SO ORDERED.

Date: March 31, 2017

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE